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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 DISCOVERORG DATA, LLC,

9 Plaintiff,

v.

10 QUANTUM MARKET RESEARCH
11 INC.,

12 Defendant.

CASE NO. C19-5656 BHS

ORDER DENYING
DEFENDANT’S MOTION TO
DISMISS

13 This matter comes before the Court on Defendant Quantum Market Research,
14 Inc.’s (“Quantum”) motion to dismiss for lack of personal jurisdiction. Dkt. 8. The Court
15 has considered the pleadings filed in support of and in opposition to the motion and the
16 remainder of the file and hereby denies the motion for the reasons stated herein.

17 **I. PROCEDURAL AND FACTUAL HISTORY**

18 Plaintiff DiscoverOrg Data, LLC (“DiscoverOrg”) provides sales and marketing
19 information for business to business sales. Dkt. 1. DiscoverOrg’s claims stem from its
20 allegation that Quantum “stole access to DiscoverOrg information (about 9,300 records)
21 and used them for its own sales and marketing, without paying DiscoverOrg any
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1 licensing fees.” *Id.* DiscoverOrg is a limited liability company with its principal place of
2 business in Vancouver, Washington, and Quantum is a Delaware corporation with its
3 principal place of business in Nebraska. *Id.* ¶¶ 1–2.

4 Relevant to the instant motion, DiscoverOrg’s Corporate Counsel James Henry
5 (“Henry”) declares that starting in July 2017, “Quantum personnel were engaged in sales
6 discussions with DiscoverOrg personnel.” Dkt. 11 at 4 (citing Dkt. 12, ¶ 4.). These
7 conversations occurred by phone and email and continued through at least November
8 2017. *Id.* (citing Dkt. 12, ¶ 4–5). Henry further declares that DiscoverOrg sales personnel
9 frequently disclose DiscoverOrg’s Vancouver, Washington location on sales calls, and
10 that DiscoverOrg emails sent to Quantum included phone numbers with Washington area
11 codes. *Id.* (citing Dkt. 12, ¶¶ 6–7). From October 27, 2017 to November 4, 2017,
12 Quantum used DiscoverOrg’s database with permission through “a one-week trial with
13 access of two user seats.” *Id.* at 4–5 (citing Dkt. 12, ¶ 8). Quantum did not purchase a
14 license to access DiscoverOrg’s database after the trial license expired. *Id.* at 5 (citing
15 Dkt. 12, ¶ 9).

16 Next, DiscoverOrg Compliance Analyst Jie Smith (“Smith”) declares that three IP
17 addresses linked to Quantum accessed DiscoverOrg’s database without authorization in
18 November 2017. *Id.* (citing Dkt. 13, ¶¶ 5–6). Smith declares that Quantum ran searches,
19 viewed proprietary information, downloaded over 9,300 records, and used these records
20 to sell its products. *Id.* (citing Dkt. 13, ¶¶ 6–7). Whenever Quantum accessed
21 DiscoverOrg’s login page, it “was presented with a link to DiscoverOrg’s End User
22 License Agreement.” *Id.* (citing Dkt. 13, ¶ 8). DiscoverOrg’s Director of Customer

1 Support Will Hinrichs declares that the only way Quantum could have accessed the
2 allegedly stolen records was by using the login credentials of a DiscoverOrg licensee, and
3 that “DiscoverOrg’s website also contains multiple notifications that DiscoverOrg is
4 based in Washington.” *Id.* (citing Dkt. 15, ¶¶ 9–10).

5 On July 18, 2019, DiscoverOrg filed a complaint asserting claims for theft of trade
6 secrets, misappropriation of trade secrets, misappropriation, copyright infringement,
7 violation of the federal Computer Fraud and Abuse Act, trespass to chattels, unjust
8 enrichment, intentional interference with contract, and negligence. Dkt. 1. On August 22,
9 2019, Quantum filed the instant motion to dismiss for lack of personal jurisdiction. Dkt.
10 8. On September 9, 2019, DiscoverOrg responded. Dkt. 11. On September 13, 2019,
11 Quantum replied. Dkt. 16. On September 16, 2019, DiscoverOrg filed notice of intent to
12 surreply. Dkt. 17. On September 18, 2019 DiscoverOrg surreplied. Dkt. 18.

13 II. DISCUSSION

14 A. Standard on a Motion to Dismiss Under Fed. R. Civ. P. 12(b)(2)

15 To determine whether it has jurisdiction over a defendant, a federal court applies
16 the law of the state in which it sits, as long as that law is consistent with federal due
17 process. *Daimler AG v. Bauman*, 571 U.S. 117, 126 (2014). Washington allows the
18 maximum jurisdictional reach permitted by due process. *Easter v. Am. W. Fin.*, 381 F.3d
19 948, 960 (9th Cir. 2004). Due process is satisfied when subjecting the entity to the court’s
20 power does not “offend ‘traditional notions of fair play and substantial justice.’”
21 *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) (quoting
22 *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). “[T]raditional notions of fair

1 play and substantial justice” require that a defendant have minimum contacts with the
2 forum state before it may be haled into a court in that forum. *Int’l Shoe*, 326 U.S. at 316
3 (1945). The extent of those contacts can result in either general or specific personal
4 jurisdiction over the defendant. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564
5 U.S. 915, 919 (2011).

6 “Although the plaintiff cannot simply rest on the bare allegations of its complaint,
7 uncontroverted allegations in the complaint must be taken as true.” *Schwarzenegger v.*
8 *Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (internal quotation marks and
9 citations omitted). “Additionally, any evidentiary materials submitted on the motion are
10 construed in the light most favorable to the plaintiffs and all doubts are resolved in their
11 favor.” *See Ochoa v. J.B. Martin & Sons Farms, Inc.*, 287 F.3d 1182, 1187 (9th Cir.
12 2002).

13 Specific jurisdiction permits a district court to exercise jurisdiction over a
14 nonresident defendant for conduct that “create[s] a substantial connection with the forum
15 State.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014). A defendant creates a substantial
16 connection in a tort-based action when it purposefully directs its activities at the forum
17 state, the lawsuit arises out of or relates to the defendant’s forum-related activities, and
18 the exercise of jurisdiction is reasonable. *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir.
19 2015) (“*Picot*”). Purposeful direction constitutes (1) an intentional action, (2) expressly
20 aimed at the forum state, which (3) cause harm “the brunt of which is suffered—and
21 which the defendant knows is likely to be suffered—in the forum state.” *Core-Vent Corp.*
22 *v. Nobel Industries AB*, 11 F.3d 1482, 1485–86 (9th Cir. 1993) (citing *Calder v. Jones*,

1 465 U.S. 783, 788–89 (1984)). In applying this test, the Court must “look[] to the
2 defendant’s contacts with the forum State itself, not the defendant’s contacts with persons
3 who reside there.” *Walden v. Fiore*, 571 U.S. 277, 285 (2014). “[A]n injury is
4 jurisdictionally relevant only insofar as it shows that the defendant has formed a contact
5 with the forum state.” *Id.* at 290. However, the Supreme Court also explained in a
6 footnote that *Walden* “does not present the very different questions whether and how a
7 defendant’s virtual ‘presence’ and conduct translates into ‘contacts’ with a particular
8 State.” *Id.* at 290 n.9. In applying *Walden*, the Ninth Circuit found in *Picot* that contact
9 between non-forum residents outside the forum which interfered with the plaintiff’s
10 contract and ability to access out-of-forum funds was not meaningfully tethered to the
11 forum and created an injury that would “follow [the plaintiff] wherever he might choose
12 to live or travel.” *Picot*, 780 F.3d at 1215.

13 If the plaintiff establishes the first two factors, the defendant “must present a
14 compelling case that the presence of some other considerations would render jurisdiction
15 unreasonable’ in order to defeat personal jurisdiction.” *Harris Rutsky & Co. Ins. Servs.*
16 *Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1132 (9th Cir. 2003) (quoting *Burger King*
17 *v. Rudzewicz*, 471 U.S. 462, 477 (1985)). These considerations include the extent of the
18 defendant’s purposeful interjection into the forum, the burden on the defendant, conflict
19 of sovereignty with the defendant’s state, the forum state’s interest, judicial efficiency,
20 the importance of the forum to the plaintiff’s interest in convenient and effective relief,
21 and the possibility of alternate forums. *Id.* (citing *Core-Vent*, 11 F.3d at 1487–88).

1 The parties agree that DiscoverOrg seeks to establish specific personal jurisdiction
2 over Quantum and alleges tort-based claims. Dkt. 8 at 6–7; Dkt. 11 at 6.

3 **B. Merits of Specific Jurisdiction**

4 Regarding purposeful direction and whether the lawsuit arises out of the
5 defendant’s forum-related activities, in its motion Quantum generally denies that it has
6 “engaged in any conduct that connects it to the state of Washington in any meaningful
7 way.” Dkt. 8 at 6 (citing Dkt. 9, Declaration of Quantum CEO Greg Harris (“Harris”), ¶¶
8 5–14). Quantum argues that DiscoverOrg fails to identify specific actions which took
9 place in Washington, meaning that like *Walden*, the alleged wrongdoing is not sufficient
10 to support jurisdiction because it only affected “plaintiffs with connections to the forum
11 state” instead of showing the defendant formed a connection with the forum. *Id.* (citing
12 *Walden*, 571 U.S. at 291). While DiscoverOrg argues that Quantum failed to contest the
13 first two elements of the jurisdictional test in its motion, Dkt. 11 at 6, the Court finds that
14 Quantum’s argument, albeit brief, is that no harm can be found to arise out of its forum-
15 related activity because it directed no conduct at Washington.

16 **1. Purposeful Direction**

17 The parties do not appear to dispute whether the alleged improper login and
18 removal of files would constitute an intentional act. Regarding express aiming,
19 DiscoverOrg argues that theft from its website or servers is aimed at Washington in the
20 same way it would be if that theft was from its physical office. Dkt. 11 at 7. In four post-
21 *Walden* cases cited by DiscoverOrg, district courts considered the location of the
22 plaintiff, the plaintiff’s business if applicable, the defendant’s knowledge of the

1 plaintiff's location and relationship with that location, and the plaintiff's servers when
2 assessing specific personal jurisdiction. *Christie v. Nat'l Inst. for Newman Studies*, 258 F.
3 Supp. 3d 494, 500 (D.N.J. 2017) (sufficient for personal jurisdiction that defendant
4 knowingly reached out to plaintiff and his computer in the forum to tortuously delete
5 plaintiff's emails even though email provider housed its servers in a third state); *Motio,*
6 *Inc. v. BSP Software LLC*, No. 3:16-CV-00331-O, 2016 WL 9559916, at *5 (N.D. Tex.
7 May 27, 2016) (sufficient for personal jurisdiction that defendant used false online
8 identity to steal plaintiff's intellectual property from plaintiff's company known to be in
9 the forum even though the parties disputed whether the server housing the data was in the
10 forum); *Microsoft Corp. v. Aventis Sys., Inc.*, No. C16-1234RSM, 2016 WL 6650996,
11 *1–2 (W.D. Wash. Nov. 10, 2016) (“*Aventis*”) (contacts sufficient for personal
12 jurisdiction when defendant had small portion of sales in forum, sold one computer with
13 plaintiff's unlicensed software to consumer in forum, knew plaintiff was located in
14 forum, and repeatedly contacted plaintiff's servers in forum to activate unlicensed
15 software); *Microsoft Corp. v. Mountain W. Computers, Inc.*, 2015 WL 447490, at *1
16 (W.D. Wash. July 22, 2015) (“*Mountain West*”) (contacts sufficient for personal
17 jurisdiction when defendants ordered plaintiff's software from third-party vendor located
18 in forum and contacted plaintiff by telephone and through plaintiff's servers in forum to
19 activate the software).

20 In reply, Quantum argues that *Aventis* and *Mountain West* show two critical
21 factors not present here are required to support jurisdiction in internet torts: (1) the
22 presence of the plaintiff's servers in the forum, and (2) additional contacts between the

1 defendant and the forum. Dkt. 16 at 4. Quantum argues the facts at bar are more similar
2 to *Microsoft Corp. v. Comms & Data Sys. Consultants, Inc.*, 127 F. Supp. 3d 1107, 1115
3 (W.D. Wash. 2015), where the defendant's only contact with the forum was internet
4 contact with the plaintiff's servers to activate unlicensed software which the defendant
5 had purchased elsewhere. *Id.* at 5. Quantum also contests DiscoverOrg's characterization
6 of *DEX Sys., Inc. v. Deutsche Post AG*, 727 Fed. App'x 276 (9th Cir. 2018), *cert. denied*
7 *sub nom. DHL Supply Chain v. DEX Sys., Inc.*, 139 S. Ct. 592 (2018) ("*DEX*"). *Id.* at 4.
8 While DiscoverOrg argues that *DEX* shows jurisdiction is proper when a defendant
9 software licensee's contacts with the forum occur in the form of contacts with the
10 plaintiff's servers in the forum after the license expires, Dkt. 11 at 8, Quantum argues that
11 *DEX* shows that establishing plaintiff's servers were located in the forum and defendant
12 knew where the servers were located is critical to the jurisdictional analysis. *Id.* at 4–5.

13 In surreply, DiscoverOrg asks the Court to strike Quantum's argument that a
14 server located in the forum is critical, arguing that Quantum did not raise this point in its
15 motion. Dkt. 18 at 1–2 (citing, inter alia, *Quinstreet, Inc. v. Ferguson*, 2008 WL
16 5102378, at *4 (W.D. Wash. Nov. 25, 2008)). While the Court agrees that the server
17 argument was not raised in Quantum's motion, the Court agrees with DiscoverOrg that
18 server location is only one factor courts consider and is not dispositive. Therefore, the
19 Court denies the motion to strike as moot.

20 The Court concludes that Quantum's discussions with DiscoverOrg sales
21 personnel and trial use of DiscoverOrg's service leading up to the alleged unauthorized
22 login and theft of records were not random or attenuated and meet the threshold for

1 contacts sufficient to support DiscoverOrg’s burden on express aiming and harm suffered
2 in the forum state. Specifically, Quantum’s contact with Washington was not limited to
3 the discrete incident of online theft—leading up to the alleged theft, Quantum personnel
4 conducted conversations with DiscoverOrg personnel by phone and email for nearly two
5 months and accessed DiscoverOrg’s extensive website services with permission for a full
6 week. On this basis, Quantum knew or should have known DiscoverOrg was located in
7 Washington and specifically directed its conduct at DiscoverOrg as an entity established
8 in Washington, doing business in Washington, and suffering the resulting harm in
9 Washington. Wherever DiscoverOrg’s servers are located, the Washington location of
10 DiscoverOrg’s physical offices and personnel outweigh the server location on these facts.
11 Moreover, the Court finds that unlike *Picot* where harm directed at a forum resident and
12 experienced through his lack of access to out-of-state funds would be felt “wherever he
13 might choose to live or travel,” 780 F.3d at 1215, DiscoverOrg and its operations are
14 embedded in Washington, Quantum developed a relationship with DiscoverOrg, and then
15 allegedly directed harm at DiscoverOrg which would be felt in those embedded
16 operations in Washington and not elsewhere.

17 **2. Fair and Reasonable Exercise of Jurisdiction**

18 Quantum emphasizes that the exercise of personal jurisdiction over it is not
19 reasonable. Dkt. 8 at 6. Quantum cites *Ticketmaster-New York, Inc. v. Alioto*, 26 F.3d
20 201, 210 (1st Cir. 1994) for the proposition that if a plaintiff has a weak case for the first
21 two elements of personal jurisdiction, the defendant’s burden on the third element is
22 correspondingly lower. *Id.* at 6–7. The Court does not find the plaintiff’s case sufficiently

1 weak that Quantum is relieved of its burden to make a compelling case that the exercise
2 of jurisdiction would not be reasonable. *Harris Rutsky*, 328 F.3d at 1132.

3 Regarding the first reasonableness factor, Quantum argues it has no locations,
4 property, employees, or business license in Washington and has not purposefully
5 interjected itself into Washington’s affairs. Dkt. 8 at 7. Regarding the second factor,
6 Quantum argues it would be highly burdensome for it to defend this matter in
7 Washington. *Id.* Regarding the fourth factor, Quantum argues that because no action took
8 place in Washington, Washington has no interest in adjudicating the dispute. *Id.* Quantum
9 argues the fifth factor, efficient judicial resolution, is neutral due to the advantage to
10 DiscoverOrg and the disadvantage to Quantum. *Id.* Regarding the seventh factor, an
11 alternate forum, Quantum argues “DiscoverOrg can bring its claims in a forum that is
12 consistent with Quantum’s due process rights.” *Id.* at 8. DiscoverOrg counters that the
13 events and the harm did occur in Washington, the burden on Quantum to defend in
14 Washington is not excessive, the majority of the evidence is based either in
15 DiscoverOrg’s facilities or personnel in Washington, and an alternate forum would be
16 unreasonable given Quantum’s tortious conduct. Dkt. 11 at 11–12.

17 The Court finds that after weighing these factors, the outcome is neutral or close to
18 it, and does not present a compelling case that jurisdiction is unreasonable. While there is
19 a burden on Quantum to defend in a forum where it is not at home, it does appear that at
20 least slightly more evidence would be found with DiscoverOrg’s facilities and personnel
21 having sustained the alleged intrusion, Washington has an interest in adjudicating alleged
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1 torts against Washington-created intellectual property, and there is no apparent conflict of
2 sovereignty between states.

3 The Court therefore concludes that DiscoverOrg has satisfied its burden to show
4 specific jurisdiction should lie and Quantum has not presented a sufficiently compelling
5 case that it should not.

6 **III. ORDER**

7 Therefore, it is hereby **ORDERED** that Quantum's motion to dismiss for lack of
8 personal jurisdiction, Dkt. 8, is **DENIED**.

9 Dated this 31st day of October, 2019.

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12 BENJAMIN H. SETTLE
United States District Judge

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